In the High Court of Punjab and Haryana at Chandigarh

C.R. No.1641 of 2002
Date of decision:07-12-2006

Sukhdev Singh .....Petitioner

Versus

Jasbir Singh and others .....Respondents

CORAM: Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr. Amit Rawal, Advocate, for the petitioner.
Mr. Avnish Mittal, Advocate, for the respondents.

VINOD K.SHARMA,J.

The present revision petition is directed against the order dated 16-3-2002 passed by the learned Additional District Judge, Ludhiana, upholding the order dated 20-2-2002 passed by the learned Civil Judge (Jr. Divn.), Ludhiana, vide which the objections filed the petitioner against the execution of the decree, were dismissed.

Jaswant Singh, predecessor in-interest of respondents had filed a suit for possession by way of specific performance of agreement to sell dated 24-8-1968 against Gurcharan Singh regarding 63 Kanals 11 Marlas of land comprised in Khewat Nos. 54, 55 Min,

Khatauni Nos. 120, 122 Min, Khasra Nos. 23//10/1, 23//9, 11,12, 19,20, 1, 10/2 ,21/1, 22, as per jamabandi for the year 1965-66 situated at Village Gobindgarh, Tehsil and district Ludhiana. The said suit was decreed by the learned Sub Judge, Ludhiana vide judgment and decree dated 28-2-1970. The appeal filed by Gurcharan Singh was dismissed by this Court on 14th May, 1985.

The plaintiff decree-holder moved the executing Court for getting the sale deed executed in his favour and deposited the balance consideration of Rs. 13,000/- on 21st January, 1986. However, keeping in view the fact that LPA against the judgment passed by this Court in RFA No.1125 of 1976 was admitted and execution proceedings were stayed by this Court, the executing Court adjourned the case sine die. On dismissal of of the LPA, the decree holder approached the Court for execution of the sale deed in their favour and accordingly a conveyance deed was executed in favour of the decree-holder on 25-5-2001. In view of the execution of the conveyance deed, the decree-holder sought possession of the land. The present petitioner claiming himself to be son of of Gurcharan Singh filed objections under Section 47 read with Order 21 Rule 58, Order 21 Rule 97, Order 21 Rule 101 read with Section 151 of the Code of Cvil Procedure (for short the 'Code') claiming that after the death of his first wife Baljit Kaur, Shri Gurcharan Singh had married Jagir Kaur and from their wedlock he was born. Shri Gurcharan Singh also died thereafter. It was further claimed that after the death of Gurcharan Singh, the mutation of his

estate was sanctioned in favour of all the class-I heirs on 27-6-1994 including the petitioner herein, who got 1/5th share in the property. He filed an application for being impleaded as a party in the application, but the said application was dismissed on 11-10-1996. It was also claimed by the petitioner that the property in dispute was a joint Hindu family coparcenary property in which he had got an interest right from his birth. He challenged the sale deed dated 25-5-2001 by filing a civil suit which was pending in the Court of Civil Judge (Jr. Divn.), Ludhiana. It was also asserted that since the decree-holderby misrepresentation had got the order regarding issuance of warrant of possession of the land, therefore, the order deserved to be recalled. It was further claimed that the disputed property was not liable to be attached as no valid judgment and decree was passed against him and, therefore, the sale was also liable to be set aside.

The decree-holder contested the objections contending that the same were not maintainable. The judgment-debtors had been proceeded against ex-parte and the application filed by them for setting aside the ex-parte order dated 18-11-2000 was dismissed by the executing Court on 30-1-2002. It was also claimed that the objections were just abuse to the process of Court. The decree-holder further claimed that the property was not a joint Hindu Family coparcenary property and that the petitioner had filed objections under Section 47 of the Code on 11-4-1996 which were dismissed on 11-10-1996. It was also claimed that Sukhdev Singh was not a legal heir of Gurcharan

Singh. The petitioner had also filed an application under Section 27 of the Specific Relief Act for rescinding the agreement entered into between the decree holder Jaswant Singh and Gurcharan Singh which was dismissed. In view of this, the executing Court dismissed the objections filed by the petitioner.

Learned Courts below came to a positive conclusion that legal heirs of Gurcharan Singh have succeeded in taking advantage of the loopholes and lacuna in the procedural law and successfully avoided the execution of the decree for almost 3 decades. It was observed that the petitioner had been filing objections under one provision or the other with an attempt to obstruct the execution of the decree and he was successful to a great extent in doing that. It was further observed that it was not open to the petitioner to claim himself to be son of Gurcharan Singh which he was not able to prove conclusively so as to get the clock set back and reopen the controversy by putting forward a plea that the disputed property happened to be a joint Hindu Family Coparcenary property in which he had acquired interest by birth. It was also observed that the petitioner has not disclosed his date of birth by placing on record any birth certificate which could have shown that he is a legitimate son of Gurcharan Singh. The petitioner was claiming his share in the property merely on the basis of a mutation regarding inheritance of Gurcharan Singh, which was claimed to have been sanctioned in his favour to the extent of 1/5th share. The learned Courts below rightly held that the mutation

did not confer any title. It was also observed that the objections filed by the petitioner smacked of mala fide and were filed with the sole object to prolong the proceedings without their being any merit. The learned Courts below also came to the conclusion that the judgments relied upon by the petitioner in his support did not remotely apply to the facts of the case. It was also held that as the petitioner was claiming his right through Gurcharan Singh, who was party to the civil suit, which attained finality. Therefore, he has no independent right. It was also observed by the learned Courts below that the petitioner had failed to show as to how he was legally entitled to possession. It was also noticed that the case of the petitioner was that he had filed a civil suit in the Court of Civil Judge, Ludhiana, challenging the sale in favour of the decree-holder. Therefore, it was rightly observed by the learned Courts below that in case the petitioner succeeds in the said case, he would be entitled to possession of his share as per the decree of the Court under the provisions of Section 144 of the Code of Civil Procedure. However, it was held that prima facie there was no merit in the contention raised by the learned counsel for the petitioner. The learned Courts below also observed that the petitioner was not even born when the decree was passed and, therefore, there was hardly any reason to hold that he acquired interest in the property by birth. Accordingly, the appeal was dismissed.

Mr. Amit Rawal, learned counsel for the petitioner, has

challenged the impugned orders primarily on the ground that after the execution of the sale deed on 25-5-2001, he acquired an independent right to challenge the said sale deed being a coparcener and, therefore, he was entitled to file objections in the execution application being 3rd party. This contention of the learned counsel for the petitioner is totally misconceived. It is not in dispute that earlier objections filed by the petitioner were dismissed, rather the Court had held that he had failed to prove that he was son of late Shri Gurcharan singh. Thus, prima facie the second objection petition before the executing Court was not competent.

Learned counsel for the petitioner thereafter contented that in view of the provisions of Order 21 Rule 104 of the CPC, the petitioner was entitled to seek stay of the warrant of possession. The reliance of the petitioner on Order 21 Rule 104 CPC is also totally misconceived as in the present case, the petitioner was seeking to obstruct the execution of the decree on the plea that he has filed a suit in the civil court challenging the sale made by Shri Gurcharan Singh by claiming himself to be a coparcener. However, there was no order under rules 101 and 103 of the CPC which was the subject matter of the suit nor any suit was pending on the commencement of the proceedings referred to above and, thus provisions of order 21 Rule 104 CPC do not apply.

Learned counsel for the petitioner thereafter placed reliance on the judgment of the Hon'ble Supreme Court in the case of

Babulal Vs. Raj Kumar and others, AIR 1996 SC 2050 to contend that objections of the petitioner were required to be adjudicated. This authority is of no help to the petitioner as in the present case objections filed by the petitioners have been rejected finding them to be without any merit. The petitioner thereafter placed reliance on the judgment of the Hon'ble Supreme Court reported in the case of **Sunil Kumar and another vs. Ram Parkash and others, AIR 1988 SC 576,** to contend that suit for injunction restraining the 'Karta' from dispossessing of the joint Hindu family property was not maintainable as the right would accrue to the plaintiff after the sale deed is executed. Even this authority would not help the petitioner to raise objection as he has already filed the suit before the Court and the relief sought would be considered in the said suit. This does not advance the case of the petitioner that the warrant of possession issued in favour of the decree-holder was required to be recalled especially when the learned Courts below have held that the application moved by the petitioner was totally mala fide.

Learned counsel for the petitioner thereafter placed reliance on the judgment of this Court in the case of **Sant Parkash Vs. Nirmal Singh, 1998 (2) CCC 212 (P&H)** to contend that the petitioner was competent to challenge the alienation. However, the said judgment deals with amendment of the suit to withdraw the admission and, therefore, reliance is totally misconceived.

In view of the foregoing discussion, I do not find any

force in the contentions raised by the learned Counsel for the petitioner. The revision petition being devoid of any merit is, accordingly, dismissed.

Dec. 7,2006 **(VINOD K.SHARMA)**
'dls' **JUDGE**